

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 462 of 2003

with

SPECIAL CIVIL APPLICATION No 463 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE SHARAD D.DAVE

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1. Whether Reporters of Local Papers may be
allowed : YES
to see the judgements?

2. To be referred to the Reporter or not?
: YES

3. Whether Their Lordships wish to see the fair
copy : NO
of the judgement?

4. Whether this case involves a substantial
question : NO
of law as to the interpretation of the
Constitution
of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the concerned
: NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Trib
unals?

GUJARAT SHEEP & WOOL DEVELOPMENT
CORPORATION LTD.

Versus

CHHAGANBHAI TAPUBHAI

Appearance:

1. Special Civil Application No. 462 of 2003
MR PV HATHI for Petitioner No. 1
MR PANKAJ R DESAI for Respondent No. 1
 2. Special Civil Application No. 463 of 2003
MR PV HATHI for Petitioner No. 1
MR PANKAJ R DESAI for Respondent No. 1
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CORAM : HON'BLE MR.JUSTICE SHARAD D.DAVE

Date of decision: 14/06/2005

COMMON C.A.V. JUDGEMENT

As common question is involved in both the petitions, the same have been heard to gather and disposed of by this common judgement.

2. Both the petitions have been filed by the Gujarat Sheep & Wool Development Corporation (hereinafter referred to as "the Corporation" for short) under Articles 226 and 227 of the Constitution of India challenging the common Judgement and Award dtd.21/9/2002 passed by the learned Labour Court, Rajkot in Reference (LCR) Nos.2004 and 2003 of 1988, whereby the Labour Court directed the petitioner Corporation to reinstate the respondents of both the petitions on their original post with 20% back wages within 30 days from the date of publication of the Award. The Labour Court also directed to pay Rs.250/- to the respondents towards cost.

3. Mr.P.V. Hathi, learned counsel for

the petitioner Corporation has mainly argued that on introduction of the large scale breeding scheme, the respondents were employed as Daily Wagers in the year 1982-83 and they were working as agricultural labourers and so long as the Central Govt. provided the finance, and their appointment were not regular appointment and they had not raised any grievance about their status or the wages paid to them as daily wager. He has further argued that on closure of the scheme, the respondents workmen were relieved. It is further argued that the petitioner Corporation is not carrying any industrial activity; that the respondents workmen were employed for a particular scheme and on discontinuation thereof, their services were terminated and there was no recruitment thereafter and no new person was appointed in their place. It is also argued that before terminating the service, the respondents were paid the notice pay of one month and 15 days' compensation for each year's service; that the services of other 22 similarly situated persons were also terminated; that the respondents failed to discharge the burden which was on them in proving that they were entitled to invoke the provisions of the I.D. Act and they had worked for 240 days in a year continuously; they have not received

compensation and notice pay; the labour court failed to appreciate that the scheme was discontinued and there was no vacant post and the respondents have no right to claim reinstatement; the labour court failed to appreciate that the respondents were carrying on the business of selling grass and was in fact supplying the grass to the petitioner Corporation, which is clear from the documents produced by the petitioner Corporation before the Labour Court; that the Labour Court failed to appreciate written arguments and the judgements produced by the petitioner before it; that the impugned Awards are against the evidence on record and settled legal position; Consequently, it is prayed to quash and set aside the impugned common award. Learned counsel for the petitioner Corporation has placed reliance on the decision reported in 2000 (1) GLH 238.

4. On the other hand, Mr.P.R. Desai, learned counsel for the respondents has vehemently argued that the respondents were working as agricultural labourer under the petitioner since last 10 years at the monthly salary of Rs.360.00, but their service have been terminated illegally, arbitrarily and without following mandatory procedure and there was breach of Sec.25(F),25(G) and 25(H) of the ID Act;

that the petitioner Corporation is an industry; that the petitioner has not maintained seniority for terminating the service of the respondents; that it is not proved that the respondents were gainfully employed. It is further argued that both the petitions have been filed under Articles 226 and 227 of the Constitution of India and this Court has limited jurisdiction under the said Articles and this court cannot reappreciate the evidence and disturb the finding of fact recorded by the fact finding authority, more particularly when the impugned Award is not perverse and the same is just, legal and proper and no error is committed by the labour Court while passing the impugned Award; that the said respondent has completed 240 days service in each and every year; that the petitioner is taking contrary stand, on the one hand the petitioner has stated that the respondents have not completed 240 days and on the other hand, it is stated that notice and retrenchment allowance has been paid to the respondents. It is further argued that the impugned Award has been passed by the Labour Court considering all the aspects of the matter and has granted only 20% back wages, which is just and legal and does not call for any interference at the hands of this Court. Consequently, it is prayed to dismiss

both the petitions. Learned counsel for the respondents has

relied on the following decisions;

[1] 2003(1) GLH 1075

[2] 2002(1) SCC 319

[3] 2002(2) GLH 359

[4] 1997(II) SCC 391 and

[5] 1987 GLH 192.

5. Having heard the learned counsel for the

respective parties and considering the material on

record, it is clear that the respondents were working as

daily wagers under the petitioner Corporation under the

large scale breeding scheme, for which finance was

provided by the Central Government and as on closure of

the scheme, the Central Government stopped to release the

funds, the services of the respondents were terminated by

the petitioner Corporation. The appointment of the

respondents were not regular appointment. Considering

all the aspects of the matter, relevant proposition of

law and the decisions cited by the learned counsel for

the respective parties, in view of the decision of the

Larger Bench of this Court in the case of Amreli

Municipality Vs. the case of Gujarat Pradesh Municipal

Employees Union, reported in 2004 (3) G.L.R. 1981 and

the decision rendered in the case of Delhi Development

Horticulture Employees Union Vs. Delhi Administration,

reported in AIR 1992 SC 789, the respondents being daily

wagers, have no right to the post and cannot claim reinstatement.

6. In view of the above, the respondent are not entitled for reinstatement and hence the Labour Court has erred in passing the impugned award. The impugned Award is, therefore, illegal and the same is required to be quashed and set aside.

7. In the result, both the petitions are allowed.

The common Judgement and Award dtd.21/9/2002 passed by the learned Labour Court, Rajkot in Reference (LCR) Nos.2004 and 2003 of 1988 is hereby quashed and set aside. Rule is made absolute to the aforesaid extent.

(SHARAD D.DAVE, J.)

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